

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TARSEM SINGH.

Petitioner,

V₃

JEFFERSON SESSIONS, et al.,

Respondents.

CASE NO. C18-516 MJP

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled Court, having received and reviewed

1. Report and Recommendation (Dkt. No. 12),
2. Petitioner’s Objections to Magistrate Judge’s Report and Recommendation (Dkt. No. 13),
3. Government’s Response to Objections to the Report and Recommendation (Dkt. No. 14),
4. Petitioner’s Reply to Government’s Response to Objections to the Report and Recommendation (Dkt. No. 15),

1 and all relevant portions of the record, rules as follows:

2 IT IS ORDERED that the Report and Recommendation is ADOPTED; the Government's
3 motion to dismiss is GRANTED; Petitioner's habeas petition is DENIED; and this action is
4 DISMISSED without prejudice to file another action should there be a material change in
5 circumstances.

6 **Background**

7 Neither party disputed the background facts presented by the Report and
8 Recommendation, and the Court adopts and incorporates them herein:

9 Petitioner last entered the United States illegally in December 1996. Dkt. 8-1 at
10 2. In May 1997, he was served with a Notice to Appear and placed in removal
proceedings. Id. In February 1998, an immigration judge ordered petition removed to
11 India. Id.; Dkt. 802. Petitioner appealed, and the Board of Immigration Appeals
affirmed. Dkt. 8-3. Petitioner sought review by the Ninth circuit, which denied his
12 petition in June 2004. Dkt. 8-4.

13 In January 2005, the U.S. Immigration and Customs Enforcement Office of
Enforcement and Removal Operations ("ICE-ERO") issued a Warrant of
14 Removal/Deportation and ordered petitioner to appear for removal on February 7, 2005.
Dkts. 8-5 & 8-6. Petition failed to appear. Dkt. 8-6.

15 On September 26, 2017, petitioner was arrested in Spokane County, Washington,
16 for Controlled Substance Possession and turned over to the U.S. Border Patrol. Dkt. 801
at 2. On October 3, 2017, he as transferred it ICE custody at the Northwest Detention
17 Center. Id. On November 2, 2017, ICE-ERO delivered a request for a travel document to
the Embassy of India ("the Embassy"). Dkt. 8-9 at 6; Dkt. 8-10. On March 15, 2018, the
18 Embassy requested an updated National Verification form from petitioner. Dkt. 8-6 at 6.
Petitioner completed the form, which ICE-ERO submitted to the Embassy on March 30,
2018. Id. Deportation Officer Scott Meyer, ICE-ERP's liaison with the Embassy
concerning the removal of Indian nationals detained in Washington State, has submitted a
21 declaration stating that he expects that the Embassy will issue a travel document in July
2018. Dkt. 9 and ¶ 8. To date, the Embassy has neither granted nor denied petitioner's
request for a travel document.

22 Since his arrest, petitioner has received two custody reviews. On December 27,
23 2017, an ICE officer determined to continue is detention, finding that he presented a
flight risk and a danger to the community. Dkt. 8-8. On April 7, 2018, an ICE officer
again reviewed petitioner's custody status and reached the same conclusion. Dkts. 8-1 &
24 8-9.

1 Dkt. No. 12, R&R at 2-3.

2 The Court updates the above facts by noting (as reflected in Dkt. No. 14, Government's
3 Responses at 3) that Petitioner's travel document has not yet issued.

4 **Discussion**

5 While ICE, which has determined Petitioner to be both a flight risk and a danger to the
6 community (*see* Dkt. Nos. 8-8, 8-9, 9), has the authority to detain Petitioner,¹ it is not permitted
7 to do so indefinitely. Petitioner has been detained beyond the six-month period found
8 "presumptively reasonable" in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). However, the
9 presumptive six-month period

10 does not mean that every [noncitizen] not removed must be released after six months. To
11 the contrary, [a noncitizen] may be held in confinement until it has been determined that
there is no significant likelihood of removal in the reasonably foreseeable future.

12 Id.

13 The Magistrate Judge found that Petitioner has not met his burden of proving that there is
14 "good reason to believe that there is no significant likelihood of removal in the reasonably
15 foreseeable future." The Court agrees. The Indian Embassy has requested updated information
16 and Petitioner presents no evidence to suggest that the Indian government is not processing the
17 request for travel documents for Petitioner. Nor does Petitioner controvert DHS's finding that
18 he is a flight risk who is unlikely to return for processing if released or to comply with an order
19 of removal when one issues.

20 The Court is not persuaded that the inability of Officer Meyers to precisely predict when
21 the travel document will issue renders Petitioner's detention "indefinite," and notes additionally
22

23 ¹ "Additionally, petitioner is inadmissible because he is present in the United States without being admitted. *See* 8
24 U.S.C. § 1182(a)(6)(A)(i)." (R&R at 3.)

1 that the estimate of when that would occur was but one factor in the recommendation to dismiss
2 the petition; the others being the indications that efforts to obtain the document are ongoing and
3 the fact that the Indian government has not rejected the request.

4

5 **Conclusion**

6 Petitioner has not met his burden of demonstrating that his confinement is indefinite, that
7 there is “no significant likelihood of removal in the reasonably foreseeable future.” The Court
8 adopts the Report and Recommendation, grants the Government’s motion and dismissed
9 Petitioner’s habeas petition without prejudice to re-file his action should circumstances warrant.

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12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated September 19, 2018.

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16 The Honorable Marsha J. Pechman
17 United States Senior District Court Judge